IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/09/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.21492 OF 2003
AND
CRL.M.P.Nos.6168 & 6169 OF 2003.

1.Madavan
2.Yovan ... Petitioners

-Vs-

State rep. by
Sub-Inspector of Police,
Suchindaram Police Station,
Kanyakumari District. ... Respondent
(Crime No.387 of 2002)

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code as stated therein.

For petitioners : Mr.K.Perumal

For respondent : Mr.A.N.Thambidurai
Government Advocate(Crl.Side)

:O R D E R

The petitioners, who are the accused in the case in C.C. No.539 of 2002 on the file of the Judicial Magistrate No.III, Nagercoil, have filed the above criminal OP praying to call for the records relating to the said case and quash the same.

2. The petitioners would submit that on the basis of a complaint of the first petitioner against Ponnian and two others, a criminal case has been registered in Cr.No.386 of 2002 on 18.5.2002 for an offence punishable under sections 341, 324, and 323; that the occurrence took place at 10.30 a.m, that the charge sheet has been filed before the Judicial Magistrate No.III, Nagercoil.

3. The further case of the petitioners is that on the basis of a complaint of A3, Poonnian, a criminal case has been registered in Crime No.387 of 2002 against Yovan and Madavan who are the petitioners herein. Both the cases arose out of one and the same transaction and in both the cases, separate trials have been commenced; that since the second petitioner was

injured, his statement was recorded in the Government Head-Quarters Hospital, Nagercoil; that it is the duty of the investigating agency to find out who is the aggressor and on that basis one of the cases has to be referred; that it is not legal to charge sheet both the cases and separate trial cannot bring the actual truth and hence, the petitioners would pray to quash the case in C.C. No.539 of 2002 on the file of the Judicial Magistrate No.III, Nagercoil.

4. When the above criminal original petition came up for admission, the learned counsel appearing on behalf of the petitioners, besides laying emphasis on the averments of the petition, would also cite the following judgments:
1. 1992 L.W.(Crl.) 74 (V.KARTHIKEYAN & 4 OTHERS vs. STATE BY S.I. OF POLICE, SIPCOT, POLICE STATION AND 11 OTHERS)
2.1992 L.W. (Crl.)206 (M.KRISHNARAJ AND 2 OTHERS vs. THE STATE REPRESENTED

BY THE SUB INSPECTOR OF POLICE, B-1, NORTH BEACH POLICE STATION, MADRAS)
3.2003 (2) Crimes 250 (SC) (STATE OF M.P. vs. MISHRILAL (DEAD) & OTHERS)
4.1990 (Supp) SCC 145 (NATHILAL AND OTHERS vs. STATE OF U.P. AND ANOTHER)

5. In the first judgment cited above, wherein both contesting parties have filed quash petitions praying to quash the cases registered by each other, the learned single Judge of this Court, having observed that 'Police Standing Order 588-A is only an administrative instruction and merely because the provisions of the order have not been followed in a particular case by the investigating agency, that would not constitute illegality to quash the proceedings launched', would ultimately dismiss both the petitions filed by the petitioners therein.

6. In the second judgment cited above also, the learned single Judge, in a case of complaints arising out of one and the same transaction, has held that `the investigating officer has to enquire into both of them and adopt one of the two cases viz. charge the case where the accused were aggressors or to refer both the cases and filing of the case for affray against both the parties under Section 160 IPC is not legal and liable to be quashed.'

7. In the third judgment cited above, in a situation, the Honourable Apex Court has held that `in cross-complaints,both the complaints cannot be said to be right. Either of them must be false. In such a situation, legal obligation is cast upon the investigation officer to cull out truth from the falsehood'.

8. In the last judgment cited above also, the Honourable Apex Court has held:
"We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter, he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment

in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other."

9. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both and further in consideration of the judgments cited supra, in a case of such nature wherein two cases are registered on one and the same cause of action, different views have been expressed by Courts particularly by the Apex Court in both the above judgments cited wherein one judgment says that the Investigating Officer should cull out the truth wherein only one case must be true case and the other false. The other judgment of the Honourable Apex Court would lay emphasis on the conducting of the trial in both the cases by one and the same Judge one by one and reserving the judgments respectively after completion of the trial in both the cases, decision must be arrived at independently in each case having regard to the facts and circumstances and the materials placed in evidence.

10. In the above situation, the duty of this Court is to find out as to which of these two judgments delivered by the Honourable Apex Court is nearer to the facts and circumstances of the case in hand and become more applicable so as to make a decision in the given situation.

11. In a case of such nature wherein both the warring groups are at loggerheads and fight against each other, it is difficult to find out as to who is the aggressor and who is the aggressed, particularly in cases of such nature wherein the casualties are heavy on both sides in which event, there is no gainsaying that only one party is the aggressor and the other aggressed, drawing a straight line. In such a situation, the jurisdiction police are left with no choice but to register both the cases on the complaints preferred by each other. At the initial stage of investigation, the investigating authority might not be in a position to make out as to who is the aggressor and who is the aggressed but it is only advisable that the investigation is to be held by one and the same Officer on both the cases and in cases of such nature, as it is advocated by the Honourable Apex Court in the case reported in 2003(2) Crimes 250 (SC) wherein the Investigating Officer is able to see that one of the parties is the aggressor and the other party is the aggressed, the Investigating Officer could lay the charge-sheet on the complaint of the aggressed as against the party of the aggressors and referring the complaint of the aggressors.

12. However, in all the cases, it need not be the same situation met with particularly in group clashes wherein both the warring

groups are poised against each other taking the law into their own hands and without resorting to the legal means, casualties could also be heavy on both sides by each of the parties indulging in criminal activities against the other. In such a situation, the Investigating Officer is left with no choice but to register both the complaints, investigate into both and file the charge-sheet against both the parties and in such a situation, the trial could also be held by one and the same Judge, if both the cases are chargesheeted as it is held in the other case of the Honourable Apex Court reported in 1990 (Supp) SCC 146 thus conducting the trial side by side and reserving the judgments and delivering the same one by one.

13. For all the above discussions held, coming to the case in hand, the petitioners, who are the accused in C.C.No.539 of 2002 pending on the file of the Court of the Judicial Magistrate No.3, Nagercoil have come forward to file the above quash petition seeking to quash the said case registered on the complaint of one Ponnayan, who is A.3 in the case registered by the petitioners, further praying to maintain the case registered on his complaint against the Ponnayan and others in Cr.No.386 of 2002 and the petitioner has not given the details of the said case registered by them for the offences punishable under Sections 341,324 and 323 IPC.

14. In the above situation, it is only proper on the part of the Investigating Officer to register both the cases and as it is advocated in the judgment of the Honourable Apex Court reported in 1990 (Supp) SCC 146 thus to facilitate both the cases to be tried for a valid decision to be arrived at by the Court. Just for the simple reason that a counter case is registered by the petitioners against the other side, the case registered against the petitioners would not, automatically, become false so as to quash the same and it is only prudent to conduct the trial in both the cases, both of them being chargesheeted and tried in the manner advocated by the Honourable Apex Court in its judgment reported in 1990 (Supp) SCC 146.

In result,
(i)there is no merit in the above criminal original petition filed by the petitioners seeking to quash the charge-sheet in C.C.No.539 of 2 002 pending on the file of the Court of Judicial Magistrate No.3, Nagercoil and the same is dismissed.
(ii)The Investigating Officer is directed to file the charge-sheet in the other case also in the facts and circumstances revealed so as to facilitate one and the same trial Court to conduct the trial and decide the same in the manner held in the case reported in 1990 (Supp) SCC 146, extracted supra.

Consequently, Crl.M.P.Nos.6168 and 6169 of 2003 are also dismissed.

Index: Yes
Internet: Yes
Rao

To
1.The Judicial Magistrate No.III,
Nagercoil

2.The Sub Inspector of Police,
Suchindaram Police Station,
Kanyakumari District.

3.The Public Prosecutor,
High Court, Madras.